

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RECEIVED
JAN 13 2019
BY: *Randerson*

SUMMONS IN A CIVIL ACTION



Case Name: **Pamela D. Kelly v Town of Nottingham, NH**
Case Number: **218-2020-CV-00008**

Date Complaint Filed: January 02, 2020

A Complaint has been filed against Town of Nottingham, NH in this Court. A copy of the Complaint is attached.

The Court ORDERS that ON OR BEFORE:

February 22, 2020	Pamela D. Kelly shall have this Summons and the attached Complaint served upon Town of Nottingham, NH by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law.
March 14, 2020	Pamela D. Kelly shall electronically file the return(s) of service with this Court. Failure to do so may result in this action being dismissed without further notice.
30 days after Defendant is served	Town of Nottingham, NH must electronically file an Appearance and Answer or other responsive pleading form with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent electronically to the party/parties listed below.

Notice to Town of Nottingham, NH: If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:

James L. Soucy, ESQ
Town of Nottingham, NH

Alfano Law Office PLLC 4 Park St Ste 405 Concord NH 03301
139 Stage Rd PO Box 114 Nottingham NH 03290

BY ORDER OF THE COURT

January 08, 2020

Marshall A. Buttrick
Clerk of Court

(126921)

DATE: 1-13-20 TIME: 2:35 pm
LOCATION: Nottingham
SERVICE: IN HAND ABODE
[Signature]
SHERIFF RICHARD C. WILTSHIRE #279
CHAM COUNTY NH

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NOTICE TO DEFENDANT

Case Name: **Pamela D. Kelly v Town of Nottingham, NH**
Case Number: **218-2020-CV-00008**

You have been served with a Complaint which serves as notice that this legal action has been filed against you in the **Rockingham Superior Court**. Review the Complaint to see the basis for the Plaintiff's claim.

Each Defendant is required to electronically file an Appearance and Answer 30 days after service. You may register and respond on any private or public computer. For your convenience, there is also a computer available in the courthouse lobby.

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: www.courts.state.nh.us, select the Electronic Services icon and then select the option for a self-represented party.

1. Complete the registration/log in process. Click Register and follow the prompts.
2. After you register, click Start Now. Select **Rockingham Superior Court** as the location.
3. Select "I am filing into an existing case". Enter **218-2020-CV-00008** and click Next.
4. When you find the case, click on the link and follow the instructions on the screen. On the "What would you like to file?" screen, select "File a Response to Civil Complaint". Follow the instructions to complete your filing.
5. Review your Response before submitting it to the court.

IMPORTANT: After receiving your response and other filings the court will send notifications and court orders electronically to the email address you provide.

A person who is filing or defending against a Civil Complaint will want to be familiar with the Rules of the Superior Court, which are available on the court's website: www.courts.state.nh.us.

Once you have registered and responded to the summons, you can access documents electronically filed by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

If you have questions regarding this process, please contact the court at 1-855-212-1234.

Important Service Information for Sheriff

Do not file this with the court

Provide this information to the Sheriff's Department.

See Instructions for Service for more information.

PLEASE PRINT CLEARLY

Date: _____

Case #: _____

Who are you requesting to be served?

Please provide whatever information you know

Name: _____

Address for service (no P.O. boxes):

_____ APT #: _____

Home phone #: _____ Cell phone #: _____

Sex: ☐ Male ☐ Female Race: _____

Last 4 digits of SS#: xxx-xx- _____ D.O.B. _____

Work name & address:

Special instructions for service (i.e. directions, best time to serve, cautions, etc.):

Vehicle description/license plate:

Your Information:

Name (please print): _____

Residential address:

Mailing address:

Phone number to contact you during business hours:

_____ Alternate #: _____

Signature

◆IN-HAND SERVICE WILL INCUR EXTRA COSTS DUE TO ADDITIONAL TRAVEL◆

SHERIFF OFFICE USE ONLY: (This will vary by Sheriff's Office)

Fees Paid: \$ _____	Cash #: _____	Check#: _____
Id#: _____	Waiver: _____	Money Order#: _____
Sheriff File # _____	Authorization #: _____	Credit Card: _____

Instructions for filing the Return of Service:

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: www.courts.state.nh.us, select the Electronic Services icon and then select the option for a self-represented party.

1. Select "I am filing into an existing case". Enter 218-2020-CV-00008 and click Next.
2. When you find the case, click on the link follow the instructions on the screen. On the "What would you like to file?" screen, select "File Other Document" and choose "Return of Service".
3. Scan the Return of Service packet and follow the instructions in the electronic filing program to upload the Return of Service to complete your filing.
4. If the sheriff was unable to serve the paperwork, you can request new paperwork by filing a Request for Documents. On the "What would you like to file?" screen, select "File Other Document" and choose "Request for Reissued Summons" from the menu and upload the Request for Documents form.

FAILURE TO FILE THESE DOCUMENTS MAY RESULT IN YOUR CASE BEING DISMISSED.

January 08, 2020

Date

Marshall A. Buttrick

Clerk of Court

You can access documents electronically filed through our Case Access Portal by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT
218-2020-CV-00008

PAMELA D. KELLY, MATTHEW H. EATON, KEVIN E. JORDAN
JEROME F. LAPHAM, JR., JAMES P. ROSBOROUGH, PETER W. LYLE, MICHAEL
HERRON, AMEDE A. BAILLARGEON, JR., SHANE CAREY, & ROGER FRIEDEN,
CHERYL LEBLANC, THOMAS DUFFY, AND
JOHN DOES #1 THROUGH #5 AND JANE DOES #1 THROUGH #5,
AS GENERAL CLASS OF RESIDENTS ALONG CAMP ROADS
IN THE TOWN OF NOTTINGHAM

v.

TOWN OF NOTTINGHAM

CLASS ACTION COMPLAINT

NOW COME, the Petitioners, Pamela D. Kelly ("Petitioner Kelly"), Matthew H. Eaton, Kevin E. Jordan, Jerome F. Lapham, Jr., James P. Rosborough, Peter W. Lyle, Michael Herron, Amede A. Baillargeon, Jr., Shane Carey, and Roger Frieden, Cheryl Leblanc, Thomas Duffy, John Does #1 through #5, and Jane Does #1 through #5, by and through their attorneys, Alfano Law Office, PLLC, and complain against the Town of Nottingham ("Respondent"), as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Pamela D. Kelly ("Petitioner Kelly") is an individual resident of the Town of Nottingham, having a primary residential address of 35 Sachs Road, Nottingham, Rockingham County, New Hampshire 03290.
2. Matthew H. Eaton ("Petitioner Eaton") is an individual resident of the Town of Nottingham, having a primary residential address of 6 Lamprey Drive, Rockingham County, New Hampshire 03290.
3. Kevin E. Jordan ("Petitioner Jordan") is an individual resident of the Town of Nottingham, having a primary residential address of 17 Beach Head Road, Nottingham, Rockingham County, New Hampshire 03290.

4. Jerome F. Lapham, Jr. ("Petitioner Lapham") is an individual resident of the Town of Nottingham, having a primary residential address of 23 Jampsa Trail, Nottingham, Rockingham County, New Hampshire 03290.
5. James P. Rosborough ("Petitioner Rosborough") is an individual resident of the Town of Nottingham, having a primary residential address of 41 Mooers Road, Nottingham, Rockingham County, New Hampshire 03290.
6. Peter W. Lyle ("Petitioner Lyle") is an individual resident of the Town of Nottingham, having a primary residential address of 11 Meindl Road, Nottingham, Rockingham County, New Hampshire 03290.
7. Michael Herron ("Petitioner Herron") is an individual resident of the Town of Nottingham, having a primary residential address of 12 Cahill Lane, Nottingham, Rockingham County, New Hampshire 03290.
8. Amede A. Baillargeon, Jr. ("Petitioner Baillargeon") is an individual resident of the Town of Nottingham, having a primary residential address of 49 Barderry Lane, Nottingham, Rockingham County, New Hampshire 03290.
9. Shane Carey ("Petitioner Carey") is an individual resident of the Town of Nottingham, having a primary residential address of 41 Seaman's Point Road, Nottingham, Rockingham County, New Hampshire 03290.
10. Roger Frieden ("Petitioner Frieden") is an individual resident of the Town of Nottingham, having a primary residential address of 93 Shore Drive, Nottingham, Rockingham County, New Hampshire 03290.

11. Cheryl LeBlanc ("Petitioner LeBlanc") is an individual resident of the Town of Nottingham, having a primary residential address of 137 Highland Avenue, Nottingham, Rockingham County, New Hampshire.
12. Thomas Duffy (Petitioner Duffy") is an individual resident of the Town of Nottingham, having a primary residential address of 28 Tuckaway Shores, Nottingham, Rockingham County, New Hampshire 03290.
13. Petitioners John Doe #1 through Petitioners John Doe #5 are individual residents of the Town of Nottingham, each having his primary residential address on/along one or more of the Camp Road(s) in the vicinity of Nottingham Lake, located in Nottingham, Rockingham County, New Hampshire 03290.
14. Petitioners Jane Doe #1 through Petitioners Jane Doe #5 are individual residents of the Town of Nottingham, each having his primary residential address on/along one or more of the Camp Road(s) in the vicinity of Nottingham Lake, located in Nottingham, Rockingham County, New Hampshire 03290.
15. The Town of Nottingham ("Respondent") is an incorporated municipality, located within Rockingham County that maintains its principal place of business at 139 Stage Rd., P.O. Box 114, Nottingham, NH 03290.
16. At all times relevant to the Petitioner's allegations and legal claims herein, the Petitioners, or their predecessors-in-title own real property located along roads maintained by the Respondent around or in the vicinity of Pawtuckaway Lake or Nottingham Lake, so-called, in the Town of Nottingham.

17. This Court has subject matter jurisdiction in this action pursuant to and consistent with R.S.A. 491:7 (civil actions and pleas, real, personal, and mixed), 491:22 (declaratory judgments) and/or R.S.A. 498:1 (equity matters).
18. This Court has personal jurisdiction over each Petitioner, because each Petitioner resides in and owns real property, which is central to this action, located within Rockingham County.
19. This Court has personal jurisdiction over the Respondent, because the Respondent, including the members of the Respondent's Board of Selectmen, is an incorporated municipality located within Rockingham County.
20. Further, this Court has jurisdiction over this matter, because the actions and/or inactions of the Respondent, by and through its Board of Selectmen and/or employees of the Respondent, which are at-issue in this action, each decision, action, and/or omission, or a majority thereof, of the Respondent occurred in Rockingham County.
21. Venue is properly in this Court, because Respondent is principally located within Rockingham County, each Petitioner resides in and is a property owner within Rockingham County, and each decision, action, and/or omission, or a majority thereof, of the Respondent occurred in Rockingham County.
22. The Petitioners demand trial by jury for actions at law.

II. CLASS ACTION ALLEGATIONS

23. Pursuant to and consistent with NH Superior Court Rule 16, the Petitioners, as representatives, initiate the present action seeking declaratory relief, in the form of the Court's determination of factual issues and application of law to such facts to determine and declare the status, rights, and obligations to/over nineteen (19) roads ("Camp

Roads”), located around a portion of Pawtuckaway Pond and/or Nottingham Lake, both of which are located in Nottingham, Rockingham County, New Hampshire.

24. The Camp Roads provide the sole ingress to and egress from numerous individual parcels or tracts of upon which approximately 375 homes exist.

The Petitioners Satisfy the Requirements of Rule 16

25. Some of those parcels are owned by multiple individuals, which would cause the number of petitioners in this action to be so large as to make it unworkable to this Court and the parties.
26. Therefore, the class is so numerous that joinder of all members is impracticable. N.H. Super. Ct R. 16. (a) (1).
27. The type of access that the above-named Petitioners have by and through the Camp Roads is similar among all named-Petitioners as well as among the named-Petitioners and all owners of real property that have access to each such real property by way of the Camp Roads.
28. The facts central to this action, being the manner in which each Camp Road was created and has been maintained by the Respondent, and the issues to be determined by this Court and the law to be applied by this Court in this action are substantively similar or the same.
29. The above-named individual Petitioners are owners of real property along the various Camp Roads (subsequently defined) and are similarly situated to the overall class, with respect to the Respondent’s maintenance, repair, and improvement of all of the Camp Roads in the Town of Nottingham, NH, with respect to the relief being requested by same Petitioners through this Complaint being able to provide adequate redress and legal relief

for the injuries and damages sustained by each and every owner of real property situated on or along the Camp Roads.

30. Questions of law and/or fact, which are common to the entire class, that predominate over any/all questions, if any, that might affect individual members of such class. N.H. Super. Ct R. 16. (a) (2).

31. The legal claim(s) of the representative party is/are the same or typical of the legal claim(s) of the entire class of petitioners. N.H. Super. Ct R. 16. (a) (3).

32. The Petitioners, having the same property rights at stake and having the potential of being exposed to similar monetary losses or damages as the entire class of potential petitioners, will fairly and adequately protect the interests of the entire class. N.H. Super. Ct R. 16. (a) (4).

33. The relief sought by the Petitioners will provide an adequate remedy to each member of the class, with both the Petitioners and the remaining members of the class being owner(s) of real property that has access to real property by way of the Camp Roads. Id.

34. In light of the Petitioners being similarly situated as the entire class, the factual and legal issues being nearly identical as between the Petitioners and the entire class, the total number of the class being so large, and the relief being requested by the Petitioners providing for an adequate redress for each member of the class, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. N.H. Super. Ct R. 16. (a) (5).

35. The attorney(s) providing legal representation to/of the Petitioners will adequately represent the interests of the class. N.H. Super. Ct R. 16. (a) (6).

Further Allegations For Class Action Status

36. In addition, separate, individualized actions, seeking a declaration as to the classification(s), rights, and obligations of individual Camp Roads would present the potential for inconsistent and/or contradictory declarations.
37. Further, separate, individualized actions as to the Camp Roads would increase the delay and expense to the parties, including the Respondent, and to this Court and the New Hampshire judicial system itself.
38. Whereas, a class action to resolve issues of fact, for the uniform application of the law, and clear declaration as to the Camp Roads presents far fewer case management difficulties and realizing the efficiency of economies of scale.

Request for Class Action Certification

39. The Petitioners, hereby, respectfully request that this Honorable Court determine that this action be maintained as a class action and issue an Order declaring and instructing the parties hereto further.
40. In the event that this Honorable Court is inclined to deny the Petitioners' request for certification of class, based solely upon the initial pleadings, the Petitioners respectfully request that a hearing be scheduled, during which the parties can provide more detailed facts, as well as maps and photographs that will aid this Honorable Court in its determination.

III. FACTS

41. Each Petitioner is the current owner-of-record of at least one (1) parcel or tract of real property (individually, "Petitioner's Property" and collectively, "Petitioners' Properties"), located in the Town of Nottingham, County of Rockingham, State of New Hampshire.

42. Access to/from the Petitioners' Properties is achieved by certain various roads, all having gravel traveling surfaces, which have been commonly and collectively referred to within the Town of Nottingham as the camp roads or pond roads ("Camp Roads").

43. In connection with the present action, the Camp Roads, as identified by the Tax Assessor and the Tax Collector for the Town of Nottingham, NH, are:

- a) so-named "Beachhead Road", a/k/a "Beach Head Road";
- b) so-named "Sachs Road";
- c) so-named "Jampsa Trail";
- d) so-named "Mooers Road";
- e) so-named "South Road";
- f) so-named "Meindl Road";
- g) so-named "Meindl Way";
- h) so-named "Meindl Way East";
- i) so-named "Brustle Road";
- j) so-named "Tuckaway Shores Road";
- k) so-named "Lamprey Drive";
- l) so-named "Indian Run";
- m) so-named "Dolloff Dam Road";
- n) so-named "Cahill Lane";
- o) so-named "Seaman's Point Road";
- p) so-named "Shore Drive";
- q) so-named "Cove Road";
- r) so-named "Highland Avenue";

- s) so-named "Lookout Point";
- t) so-named "White Grove Road";
- u) so-named "Barderry Lane"
- v) so-named "Langley Lane";
- w) so-named "Little John Lane";
- x) so-named "Nottingham Lane";
- y) so-named "Sherwood Lane"; and
- z) so-named "Swan Drive" (f/n/a "Marston Lane").

44. For many Petitioners, a single Camp Road provides the sole or single means of ingress to and egress from the Petitioner's Property.

45. Each Camp Road is named and/or show a plan or plat, which was approved and signed by the Respondent, by and through its Planning Board.

46. Each such approved plan or plat has been recorded in the Rockingham County Registry of Deeds.

47. Thereafter, one or more lots or parcels of land, which comprise or constitute the approved and recorded plan or plat was conveyed to third party purchasers, by Deed, also being recorded in the Rockingham County Registry of Deeds.

48. For over 40 years, the Respondent, by and through its employees and/or agents, has regularly and consistently performed maintenance, repairs, and improvements of the Camp Roads.

49. The maintenance that the Respondent has regularly and routinely performed on the Camp Roads for well over 40 years, includes, but has not been limited to, regularly and repeatedly plow snow, ice, and other precipitation ("winter maintenance") from each

Camp Road, spread sand, salt, and/or other materials on each Camp Road throughout the winter season.

50. For well over 40 years, the Respondent has regularly and consistently generated annual budgetary projections, assessed annual real estate taxes (commonly referred to as property taxes) on individuals, including but not limited to the Petitioners, and corporate entities who own real property within the limits of the Town; collected those property taxes as public funds; and appropriated and expended those public funds specifically to provide and pay for the labor, equipment, and materials to regularly and repeatedly perform winter maintenance on each Camp Road.
51. Other maintenance, repairs, and improvements that the Respondent has regularly and repeatedly performed, for well over 40 years, on each Camp Road, beyond or "outside" of the winter maintenance includes, but has not been limited to, preventative maintenance and/or repairing the travelling surface, cleaning or repairing drainage ditches, cleaning or repairing existing culverts previously-installed by the Respondent, installing new culverts, trimming and/or removing trees or branches, and erecting temporary road hazard signs.
52. For well over 40 years, the Respondent has regularly and consistently generated annual budgetary projections, assessed annual real estate taxes (commonly referred to as property taxes) on individuals, including but not limited to the Petitioners, and corporate entities who own real property within the limits of the Town; collected those property taxes as public funds; and appropriated and expended those public funds specifically to provide and pay for the labor, equipment, and materials to regularly and repeatedly

perform maintenance on each Camp Road beyond or “outside” of the winter maintenance it has performed.

53. The Respondent performed such maintenance, repairs, and improvements on the Camp Roads because it benefitted the Town to have Camp Roads well-maintained, for purposes including, but was not limited to, receiving increased property tax receipts for properties along or serviced by the Camp Roads.
54. Over the decades, with the Respondent regularly and consistently maintaining, repairing, and/or improving the Camp Roads, the Respondent continued to issue permits for the construction of new homes and/or approve subdivisions for properties along or accessed by the Camp Roads.
55. In addition, during decades of regular and consistent maintenance, repair, and/or improvement of the Camp Roads, the Respondent continued to issue permits for additions and improvements to be constructed on existing homes and seasonal structures.
56. Over those same decades, the Respondent has assessed and collected increased property taxes from the Petitioners, as well as their predecessors-in-title, for the improved structures, in part, so the Respondent could continue to maintain the Camp Roads.
57. Over the decades, the Respondent has maintained the Camp Roads similarly as to the maintenance performed on other roads in the Town of Nottingham that have gravel travelling surfaces.
58. In 1995, the Respondent, by and through its Board of Selectmen, designated or “declared” the Camp Roads as “emergency lanes”, under the guise of R.S.A. 231:59-a.
59. A road or highway can only be designated as an “emergency lane” if it is a private road or a Class VI highway. R.S.A. 231:59-a.

60. The terms “private road” and “Class VI highway,” for the purposes of the designation of an “emergency lane” are defined by R.S.A. 229:5.
61. The Respondent’s 1995 declaration of the Camp Roads as so-called emergency lanes failed to comply with the statutory requirements for such a designation.
62. Furthermore, under the law of New Hampshire, the Camp Roads were Class V highways by 1995 and the Respondent’s attempts to “declare” the Camp Roads as “emergency lanes” was and is invalid and beyond the Respondent’s statutorily-prescribed powers.
63. As a result, the Respondent, in 2011, engaged in another attempt to designate and classify the Camp Roads as so-called “emergency lanes.”
64. The Respondent’s second attempt to declare the Camp Roads as “emergency lanes” also was under the guise of R.S.A. 231:59-a.
65. Nonetheless, because the Camp Roads already were or had been Class V highways prior to the Respondent’s second attempt to declare the Camp Roads as “emergency lanes” in 2011, the Respondent’s second attempt to “declare” the Camp Roads as “emergency lanes” also was and is invalid.
66. The Respondent’s second attempt to declare the Camp Roads as “emergency lanes” failed to comply with the statutory requirements for such a designation.
67. By exceeding its statutorily-prescribed powers and/or authority, the Respondent’s first and second attempts to declare the Camp Roads are unlawful, invalid, and ineffective.
68. If a Class VI highway or private road is correctly and lawfully designated or “declared” an “emergency lane,” that declaration “... may be rescinded or disregarded at any time without notice.” R.S.A. 231-59-a.

69. Because the Respondent incorrectly believes that its declaration of the Camp Roads as “emergency lanes” was and is valid and effective, the Respondent also believes that it can rescind or disregard that declaration at any time and, thereby, discontinue its continued maintenance of the Camp Roads.
70. Because of the Respondent’s attempts to designate the Camp Roads as “emergency lanes,” and then, its perceived ability, under the guise of R.S.A. 231-59-a, for the Respondent to, unilaterally and without notice, rescind such designation and cease appropriating and spending public funds for the continued maintenance of the Camp Roads, has created a level of uncertainty as to the continued maintenance of the Camp Roads, which includes, but is certainly not limited to plowing snow and treating ice on the Camp Roads.
71. The uncertainty caused by the Respondent incorrectly or unlawfully designating the Camp Roads as “emergency lanes” has caused damage to the fair market values of the properties that have their access by or through the Camp Roads, as well as other damages and injuries to the Petitioners.
72. A “highway” is a way over which the entire public have the right to travel. R.S.A. 229:1.
73. A Class V highway is a highway that a municipality has the obligation to maintain. RSA 231:3.
74. A way can become a highway through a number of methods. See, e.g., RSA 229:1; and *Polizzo v. Town of Hampton*, 126 N.H. 398, 401 (1985).
75. One method is dedication and acceptance. *Id.*

76. Dedication and acceptance require that a landowner offer up its property to the municipality, and the municipality accepts it. *Hersh v. Plonski*, 156 N.H. 511, 515 (2007).
77. An offer to dedicate may be express or implied. *Id.*
78. Dedication also may occur, or be deemed to have occurred, by the recording of a plan, and lots being sold with reference to the plan. *Id.*
79. Implied dedication is one arising from the acts of the owner. Dedication can be implied from circumstances or by acts or conduct of the owner that clearly indicate an intention to devote land to public use or from which a reasonable inference can be drawn. *Hersh*, 156 N.H. at 516.
80. A landowner's acquiescence to use of a road, without objection, can be competent evidence that the landowner dedicated the land without any compensation. *Pritchard v. Atkinson*, 4 N.H. 9, 15 (1827).
81. "Whether a lapse of time is, in any particular case under the circumstance, proper to be submitted to a jury as evidence of a fact [of dedication], is a question of law to be settled by the court, and must to a certain extent depend upon the circumstances." *Pritchard*, 4 N.H. at 15.
82. Acceptance as a Class V highway may be express or implied. *Hersh*, 156 N.H., at 515.
83. Implied acceptance as a Class V highway may occur by "improving a street, repairing it, removing snow from it, or assigning police patrols to it." *Hersh*, 156 N.H., at 516.
84. Inclusion of a road on a map is competent evidence to support the inference of public use of the road. *Mahoney v. Town of Canterbury*, 150 N.H. 148, 151 (2003), citing *Williams v. Babcock*, 116 N.H. 819, 822 (1976).

85. When no "Private Road" sign is erected on a road, the public may assume the road is open for public use. *Catalano v. Town of Windham*, 133 N.H. 504, 510 (1990).
86. In fact, the Respondent has appropriated and expended public funds to purchase, erect, and maintain signs displaying the names of a number of the Camp Roads that are identical or substantially similar to the signs (green background with white letters) that the Respondent purchased, erected, and maintains on other Class V roads in the Town of Nottingham.
87. The inclusion of roads in deeds indicates use by people other than the owners of land through which the road runs. *Mahoney*, 150 N.H. at 151, citing *Williams*, 116 N.H. at 823-24.

III. CAUSE OF ACTION:

Count 1- Declaratory Judgment

("Camp Roads" are Class V Highways, by Dedication through Approved/Recorded Plat and Acceptance through Maintenance, Repair, and/or Improvements)

88. The Petitioners incorporate, by reference, each allegation set forth in the paragraphs herein above, as if each were separately and fully set forth herein.
89. The Camp Roads were dedicated by being shown on a recorded plan and lots being sold with reference to the plan.
90. Some Camp Roads were dedicated by being shown on a recorded plan, and lots being sold with reference to the plan.
91. The Camp Roads were accepted by the Respondent, as public Class V highways, by and/or through the Respondent's maintenance (including, but not limited to snow plowing), repair, and/or improvement, over an extended period of time, of the Camp Roads.

92. As such the cumulative effect of the Respondent's combined actions, with respect to the Camp Roads, is that the Camp Roads are and have been public Class V highways.
93. The Respondent has refused and continues to refuse to acknowledge and accept that the Camp Roads are and have been public Class V highways.
94. As such, a dispute exists as between the parties with respect to the title, more specifically the legal right(s) and duties of the Respondent, in or to portions of the parcels or tracts of real property upon which the Camp Roads are situated.
95. The Petitioners do not have a plain, complete, and/or adequate remedy at law that could operate to determine and declare with finality the Camp Roads as public highways and protect their legal rights with respect to the Camp Roads. *Sands v. Stevens*, 121 N.H. 1008, 1001 (1981).

Count 2- Declaratory Judgment
("Camp Roads" are Class V Highways by Dedication and Acceptance through Municipality's Maintenance, Repair, and/or Improvement)

96. The Petitioners incorporate, by reference, each allegation set forth in the paragraphs herein above, as if each were separately and fully set forth herein.
97. The owners, individually and collectively, of real property accessed by the Camp Road(s) impliedly dedicated the portions of their land that constitute the Camp Roads, by or through acquiescing to and/or allowing the Town to repeatedly perform maintenance activities to/upon the Camp Roads.
98. In addition, the owners, individually and collectively, of real property accessed by the Camp Road(s) impliedly dedicated the portions of their land that constitute the Camp Roads, by or through their participation in and/or acquiescence to the appropriation of

public funds, through public annual Town meetings, for the continued maintenance, repair, and/or improvement of the Camp Roads.

99. Further, the owners, individually and collectively, of real property accessed by the Camp Road(s) impliedly dedicated the portions of their land that constitute the Camp Roads, by or through each such owner's payment of annual real estate taxes on those same portions of land.

100. The Camp Roads were accepted by the Respondent, as public Class V highways, by and/or through the Respondent's maintenance (including, but not limited to snow plowing), repair, and/or improvement, over an extended period of time, of the Camp Roads.

101. As such the cumulative effect of the Respondent's combined actions, with respect to the Camp Roads, is that the Camp Roads are and have been public Class V highways.

102. The Respondent has refused and continues to refuse to acknowledge and accept that the Camp Roads are and have been public Class V highways.

103. As such, a dispute exists as between the parties with respect to the title, more specifically the legal right(s) and duties of the Respondent, in or to portions of the parcels or tracts of real property upon which the Camp Roads are situated.

104. The Petitioners do not have a plain, complete, and/or adequate remedy at law that could operate to determine and declare with finality the Camp Roads as public highways and protect their legal rights with respect to the Camp Roads. *Sands v. Stevens*, 121 N.H. 1008, 1001 (1981).

Count 3 – Ultra Vires
(Respondent's act of "declaring" the Camp Roads as "Emergency Lanes,"
When the Camp Roads Were Not Class VI Highways or Private Roads
Was/Is Beyond Its Powers and, Thus, Unlawful and Invalid)

105. The Petitioners incorporate, by reference, each allegation set forth in the paragraphs herein above, as if each were separately and fully set forth herein.
106. The Respondent has statutorily-prescribed powers and duties.
107. The Respondent exceeded its powers and/or failed to adhere to statutory requirements for the proper and lawful declaration of Class VI highways and/or private roads as "emergency lanes."
108. By exceeding its statutorily-prescribed powers when it unlawfully declared the Camp Roads as "emergency lanes," the Respondent has caused the Petitioners to sustain damages, including, but not limited to attorneys fees and costs, within the minimum and maximum jurisdictional limits of this Honorable Court.

Respectfully submitted,
Pamela D. Kelly, et. al.
By and through their attorneys,
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